[J-71-2018][M.O. - Donohue, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

	:	No. 56 WAP 2017
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	Appeal from the Order of the Superior
Appellee	:	Court entered May 23, 2017 at No. 951
	:	WDA 2015, affirming the Judgment of
	:	Sentence of the Court of Common
	:	Pleas of Allegheny County entered May
v.	:	21, 2015 at No. CP-02-CR-0003205-
	:	2014.
MOLLY HLUBIN,	:	
	:	
Appellant	:	
	:	ARGUED: October 23, 2018
	:	

CONCURRING AND DISSENTING OPINION

CHIEF JUSTICE SAYLOR **DECIDED: MAY 31, 2019**

I join Parts I and IV of the majority opinion, and I agree that the police officer who seized Appellant at the sobriety checkpoint lacked statutory authorization to do so. Consistent with the majority's approach, I also find that the remedy of suppression is presently warranted in the constitutionally sensitive arena of suspicionless seizures.

I would not, however, effectively overrule the decision in *Commonwealth v. O'Shea*, 523 Pa. 384, 567 A.2d 1023 (1989), without advocacy on the subject. In this regard, I have previously expressed an array of concerns with courts acting *sua sponte* to depart from precedent. *See Freed v. Geisinger Med. Center*, 607 Pa. 225, 240-45, 5 A.3d 212, 221-25 (2010) (Saylor, J., dissenting). From my point of view, the application

of the exclusionary rule to statutory violations, in scenarios in which suppression is not constitutionally required, should be approached as a matter of statutory interpretation (*i.e.*, did the General Assembly intend to afford the remedy of suppression?). Absent otherwise discernable guidance from the Legislature, it does not seem to me that the *O'Shea* test -- perhaps subject to some refinement going forward to conform it more closely to principles of statutory construction -- is so misplaced as to warrant its disapproval based on premises not argued by the parties.

Justices Baer and Dougherty join this concurring and dissenting opinion.